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November 12, 2008

VIA EMAIL

Dr. Caroline Pallard
NEDERLANDSCH OCTROOIBUREAU
P.O. Box 29720
2502 LS The Hague
The Netherlands

Re: Martin LOESSNER et al. - U.S. Patent No.
Title: VIRULENT PHAGES TO CONTROL LISTERIA ...
Your Reference: P6012360PCT/US
Our Reference: LOESSNER-1

Dear Caroline:

The above identified patent issued on October 21, 2008. We note that it has a 371(c) date of December 1, 2004, which is over three years prior to the date of issue. Please note that the U.S. District Court for the District of Columbia held on Sept. 30, 2008, (*Wyeth v. Dudas*) that the Patent and Trademark Office (PTO) has been miscalculating final Patent Term Adjustments (PTAs) since their inception (applications filed May 29, 2000). The new way of determining PTA may affect cases such as this that were pending more than three years before either (1) issuance or (2) the first filing of a request for continued examination. The start date is the U.S. filing date or, for PCT National Stage applications, the 371(c) date (which is the date of completion of all U.S. National Phase filing formalities). Attached hereto is a general informational email discussing this case and its implications, with our general recommendations.

We calculate that this patent may be entitled to approximately 325 additional days of patent term (in addition to the 258 days already awarded by the PTO) if the new way of interpretation is affirmed on appeal or is otherwise implemented by the PTO. The deadline for filing a request for reconsideration under 1.705(d) is two months from the issue date; thus December 21, 2008. Since that is a Sunday it rolls to Monday, Dec. 22. If the client is interested in preserving the possibility of gaining an additional 325 days of patent term (our initial calculation), then action has to be taken by that date.

Our charge for filing such a request for reconsideration will be about \$450 and the official fee for the request is \$200, plus our handling fee of 10%. Because of the impending deadline, we must have your instructions by December 15, 2008, if you want for us to file a

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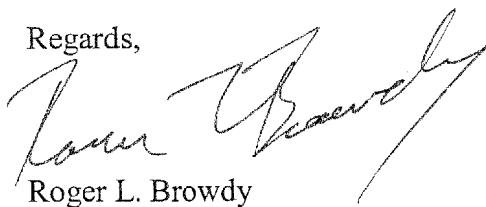
request for reconsideration by the Dec. 21 deadline. In the absence of instructions from you, we will take no action in this regard.

The PTO will probably hold off deciding any of these 1.705(d) requests until it decides whether to appeal the *Wyeth* decision to the Federal Circuit. But filing the 1.705(d) request establishes our claim to relief.

There is also a deadline of 180 days from issue in which to challenge the PTO decision by filing a suit in the District Court for the District of Columbia. If you decide to file a request for reconsideration under 1.705(d), we will explain the ramifications of this additional deadline.

Please acknowledge receipt of this letter.

Regards,

A handwritten signature in black ink, appearing to read "Roger Browdy".

Roger L. Browdy

RLB:jmd

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